



# NOTICE OF PUBLIC HEARING

NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT

Proposed Amendments to  
Regulation IV, Rule 404

Date: May 10, 2018  
Time: 10:30 AM  
Location: District Office, Main Conference Room  
707 L Street, Eureka, California

The District hereby provides public notice in accordance with California Health & Safety Code 40725 that the District Governing Board will consider the adoption of proposed amendments to *Regulation IV, Rules 404 Hearing Board Fees*. Oral and written testimony may be directed to the District Governing Board at the public hearing on May 10, 2018. Written comments may also be sent to the NCUAQMD, 707 L Street, Eureka, CA 95501, attention: Jason Davis, or emailed to [support@ncuaqmd.org](mailto:support@ncuaqmd.org). Written comments will be accepted until the close of the public hearing.

Copies of this notice, the proposed rule, and the staff report will be available for viewing beginning on April 6, 2018 at the District office located at 707 L Street, Eureka, by calling (707) 443-3093, or by visiting the District's website ([www.ncuaqmd.org](http://www.ncuaqmd.org)).

# STAFF REPORT

## PROPOSED AMENDMENTS TO Rule 404 – Hearing Board Fees



**April 6, 2018**

# Proposed Revisions to Rule 404 – Hearing Board Fees

Rule 404, Hearing Board Fees  
(C) Excess Emission Fee Schedule

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## Proposed Revisions to Regulation IV

### *Executive Summary*

The North Coast Unified Air Quality Management District (District) is the regional government agency responsible for the regulation of the air resource within the counties of Humboldt, Del Norte, and Trinity in northern California. The District Governing Board has adopted a number of rules which are codified as the District Rules and Regulations. The District Regulations form the basis for the opening burning program, the stationary source permitting program, the fee collection process, and contains a list of prohibitory rules. The District Air Pollution Control Officer is charged with the responsibility to implement these programs in accordance with the District Regulations, State and federal laws. The public may dispute a finding or decision made by the APCO. To do so, they may petition the Hearing Board for relief requesting a variance from an emission limitation or permit condition, or to challenge a permit suspension or revocation.

District Rule 404 – Hearing Board Fees grants the District the authority to recover costs associated with the Hearing Board administrative process. Staff is recommending several revisions be made to Rule 404 including the addition of a requirement for all persons applying for a variance to estimate emissions and to pay reasonable fees for emissions that are in excess of established limits.

#### **Highlights of the Proposed Rule Revisions include:**

- **Rule 404**
  - Amendment of Section C to require the petitioner for a variance to prepare an estimate of the excess emissions that would be released during the term of the variance if granted for the subject equipment.
  - Amendment of Section C, Table 2 Excess Emissions such that the excess emission fees are calculated based on application of the “X-Factor Multiplier” in a manner identical to the process used to calculate stationary source permit fees.
  - Amendment of Section (C) to include a clearly defined process for determining fees for excess opacity emissions.

## PROPOSED RULE LANGUAGE

### Rule 404 - Hearing Board Fees

The principle functions of the District include the issuance of permits, enforcement and investigation of air quality laws, monitoring of air quality, and conducting research and administration. When disputes arise, private individuals or the District may petition the District's Hearing Board seeking resolution. Rule 404 is meant to authorize the District to recover costs associated with these actions.

### Section C – EXCESS EMISSION FEE SCHEDULE

#### Discussion

A source of emissions within the District which is subject to an emissions limit, may petition District's Hearing Board for relief from regulatory limits. The administrative term for this process is referred to as a *variance*. Section C of Rule 404 establishes the authority for the District to require a petitioner for a variance to estimate the quantity of emissions which may be released during the term of the variance. Section C also establishes a procedure for calculating fees which must be paid if the variance request is granted. Staff's recommended amendments depicted in the following section where underlined passages are proposed additions and where ~~strikethrough text~~ is proposed for deletion.

#### Proposed Language

**EXCESS EMISSION FEE SCHEDULE:** As part of the variance petition, the petitioner shall prepare and submit a report of the emissions which are proposed to be discharged during the term of the variance in accordance with this section. In addition to the filing fees assessed under this Rule, each petitioner for a variance shall pay to the ~~Clerk of the Hearing Board~~District, an emissions based fee for ~~the total weight of all emissions in excess of that allowed under District Rule or permit~~ which are discharged during the term of the variance that are in excess of the quantity authorized pursuant to District permit, District Rule, or State law. The APCO shall retain at all times the sole authority to determine the quantity of emissions released and any associated fees.

1. **Estimated:** As part of the variance petition, the applicant shall provide an estimate of emissions to be discharged and shall pay an excess emission fee calculated based on Table 1 below. **Estimated Emissions:** The petitioner shall evaluate the effect of the proposed variance of the quantity of pollutants which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall report the effect of the variance on emissions of the pollutant types and categories listed in *Table 2- Excess Emissions*. The petitioner shall calculate emissions and shall report information pursuant to this Section.
  - a. **Potential to Emit:** The report shall include an estimate of the potential to emit of the

equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum quantity of emissions which are authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.

- b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum quantity of emissions which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.
- c. Excess Emissions:** The report shall include an estimate of the quantity of emissions which may be emitted in excess of regulatory limits. The excess emissions shall be equal to the quantity resulting from the subtraction of the estimated allowable emissions from the potential to emit.
- d. Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for each pollutant listed in Table 2 – Excess Emissions shall be determined separately by multiplying the quantity of excess emissions proposed to be emitted during the term of the variance by the “X-Factor Multiplier” according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees. at the time the petition is filed.

$$Fee = (Quantity\ of\ Pollutant\ in\ tons) * ("X-Factor\ Multiplier") * ("X-Factor")$$

Where:

“X-Factor” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed); and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

- 2. Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term of the variance, and within 30 days of its termination. The fee for each pollutant shall calculate the true excess emission based again be calculated pursuant to subsection (1)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on Table 1 below actual emissions shall be determined by the petitioner. Within 30 forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded the balance by the District.

Air Contaminant		X-Factor Multiplier Per Ton of Contaminant
<del>Organic gases, except methane and those containing sulfur</del> <u>CO</u>	<u>Carbon Monoxide</u>	<u>0.5</u>
NOx	Oxides of nitrogen (expressed as NO <sub>2</sub> )	1
<del>PM</del> <del>Oxides of sulfur (expressed as SO<sub>2</sub>)</del>	<u>Particulate Matter</u>	2
ROG	<del>Total reduced sulfur compounds (expressed as hydrogen sulfide)</del> <u>Reactive Organic Gases, except methane and those containing sulfur</u>	<u>2</u> <u>1</u>
<del>Particulate matter</del> <u>SOx</u>	<u>Oxides of sulfur (expressed as SO<sub>2</sub>)</u> <u>2</u>	1
<del>Opacity</del> <u>TRS</u>	<del>Use Equation</del> <u>Total Reduced Sulfur compounds (expressed as hydrogen sulfide)</u>	2

## COMMENTS FROM STAKEHOLDERS

During the months preceding the public hearing for Rule adoption, the District will receive comments from interested parties for a minimum of 30 days. The rule amendment will be noticed in the District's newspaper of record, The Times Standard. At the conclusion of the public comment period, District staff will prepare a document summarizing all comments received from the public and will provide a response to each suggestion. The results will be presented to the Governing Board for consideration at the rule adoption public hearing.

## REQUIRED REGULATORY FINDINGS

Findings required by Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings require that prior to adopting regulatory changes, the District Board make specified findings concerning authority, necessity, consistency, non-duplication and code references. The proposed revisions to Regulation I satisfy the requirements for each of the required findings as discussed below.

### Authority

*Authority - A provision of law or of a state or federal regulation which permits or requires the regional agency to adopt, amend, or repeal the regulation.*

California Health and Safety Code (H&SC) Section 40702 requires the District to adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by the HSC and other statutory provisions. H&SC 42311(h) authorizes the District Board to adopt, by regulations, a schedule of annual fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions. Pursuant to H&SC 42302 et seq. an applicant for a permit, a member of the public, or a holder of a stationary source permit may petition the District Hearing Board for review of a decision made by the District Air Pollution Control Officer.

## Necessity

*Necessity - A need exists for the regulation, or for its amendment or repeal as demonstrated by the record of the rulemaking authority.*

The fee rule amendments are necessary to fund the District Hearing Board activities and are necessary in order to ensure conformance with the requirements of Division 26, Part 3, Chapter 8 of the H&SC and with the rules for administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

## Clarity

*Clarity - The regulation is written or displayed so that its meaning can be easily understood by the persons directly affected by it.*

The proposed regulation is written in plain English utilizing generally recognized grammatical structure, and commonly understood words. The terminology used is consistent throughout the Regulations, and is consistent with State and Federal rule language. The amendments are written so that the meaning can be understood by the affected parties.

## Consistency

*Consistency – The regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.*

The proposed rule language does not conflict with District Regulations, State, or Federal law.

## Non-Duplication

*Non-Duplication - A regulation should not impose the same requirements as an existing state or federal regulation unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, a district.*

Regulation IV, Rule 404 contains the tables and schedules used to calculate fees for Hearing Board actions. The requirements of these Rules are not duplicated elsewhere in the District Regulations nor are they replicated in other volumes of federal or state law.

**Reference**

*Reference – Means the statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.*

The amendments proposed affect District Regulation IV, Rule 404. The changes are being completed in accordance with H&SC 40311(e). The Rules are intended to ensure cost recovery for hearing board costs pursuant to H&SC 42311(h).

## ENVIRONMENTAL IMPACTS

The California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency that undertakes or approves a discretionary project to prepare documentation identifying the potential environmental impacts of that project. The Guidelines exempt certain types of actions. Section 15273 of the CEQA Guidelines states: “*CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies....*” Therefore, the portions of this rule making action pertaining to fees are exempt from CEQA.

California Health & Safety Code (H&SC) Section 40727.2 imposes requirements on the adoption, amendment, and repeal of district regulations. This Code Section requires districts to identify all existing federal, state and district air pollution control requirements that apply to the same equipment or source type as the proposed rule, and the differences between these requirements and the proposed rule. The proposed fee rule amendments do not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements; therefore, HSC Section 40727.2 does not apply to the proposed fee revisions. As such, if Staff recommends that the Governing Board make said finding, and in doing so, the District’s obligations under Section 40727.2(g) are met.

California Health & Safety Code (H&SC) Section 40728.5 - *Required Assessment*, specifies that District conduct a socioeconomic impact analysis on proposed regulations. However, pursuant to Section (d), because the combined population of Humboldt, Del Norte, and Trinity Counties is less than 500,000 persons, the District is not required to prepare the assessment.

# Regulation IV

## Rule 404 – Hearing Board Fees

*This Rule was first adopted December 16, 2004; revised May 19, 2005.  
The current version was adopted by the Governing Board via Resolution 2018-X on May 10, 2018.*

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- A. PURPOSE
- B. HEARING BOARD FEE SCHEDULE
- C. EXCESS EMISSION FEE SCHEDULE

## RULE 404 HEARING BOARD FEES

- A. PURPOSE:** This rule establishes the fees which may be assessed by the District to offset costs incurred by the Hearing Board in the performance of its duties pursuant to District Regulation IV and H&SC §40800 *et seq.* The authority to establish this rule is provided for in H&SC §42364.
- B. HEARING BOARD FEE SCHEDULE:** Every applicant or petitioner for variance, or for the extension, revocation or modification of a variance; or for an appeal from a denial or conditional approval of an ATC or PTO; or for an appeal of Hearing Board decision; or for a request for rehearing including any federal, state or local governmental agency or public district, except for the APCO filing on behalf of the District, shall pay to the District a fee based on *Table 1 – Hearing Board Fees*. The fees shall be calculated in accordance with Rule 400.
- 1. Additional Fees:** Additional Hearing Board fees and costs may be assessed by the Hearing Board as a direct result of the action which the applicant or petitioner has brought before the Hearing Board.
  - 2. Costs of Hearing Transcripts and Recordings:** Any person requesting a written transcript or recording of the hearing shall pay the cost of such transcript or recording. The parties to Hearing Board proceedings may be directed by the Hearing Board to pay the cost of transcripts necessary for the Hearing Board's determination of the matter, in such proportion as the Hearing Board may order.
  - 3. Fee Waivers and Refunds for Specified Appeals**
    - a. Third party appeals or re-hearings that lead to the overturning of a previous decision by the Hearing Board or by the APCO shall be refunded 75% of the filing fee.
    - b. When issuing a permit pursuant to H&SC §42311.2, the Hearing Board may waive all or part of these fees if it determines that circumstances warrant that waiver.
    - c. Any person may allege that payment of the excess emission fee will cause an unreasonable hardship and may be excused from payment of such fees or a portion of such fees by order of the Hearing Board if the Board in its discretion determines after hearing evidence thereon that payment of such fees would cause financial hardship to the petitioner with no corresponding benefit to the public.
  - 4. Fee Payment:** Full payment of the hearing fees shall be received by the District prior to the commencement of the hearing.

Table 1 – Hearing Board Fees

Filing Fees & Services	X-Factor Multiplier
Emergency Variance Petition, Initial Hearing	2
Variance Petition (Short or Long Term), Initial Hearing	5
Subsequent Hearing(s)- To modify increments of progress, extend, revoke, or to re-hear actions taken by a single member (emergency variance)	5
Regular Hearing - Petitions to reverse APCO decisions – permit approvals & denials, levying of administrative civil penalties	5
Records of Proceedings	Actual Costs

**C. EXCESS EMISSION FEE SCHEDULE:** As part of the variance petition, the petitioner shall prepare and submit a report of the emissions which are proposed to be discharged during the term of the variance in accordance with this section. In addition to the filing fees assessed under this Rule, each petitioner for a variance shall pay to the District, an emissions based fee for all emissions which are discharged during the term of the variance that are in excess of the quantity authorized pursuant to District permit, District Rule, or State law. The APCO shall retain at all times the sole authority to determine the quantity of emissions released and any associated fees.

1. **Estimated Emissions:** The petitioner shall evaluate the effect of the proposed variance of the quantity of pollutants which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall report the effect of the variance on emissions of the pollutant types and categories listed in *Table 2- Excess Emissions*. The petitioner shall calculate emissions and shall report information pursuant to this Section.
  - a. **Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum quantity of emissions which are authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.
  - b. **Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum quantity of emissions which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.
  - c. **Excess Emissions:** The report shall include an estimate of the quantity of emissions which may be emitted in excess of regulatory limits. The excess emissions shall be equal to the quantity resulting from the subtraction of the estimated allowable emissions from the potential to emit.
  - d. **Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for each pollutant listed in Table 2 – Excess Emissions shall be determined separately by multiplying the quantity of excess emissions proposed to be emitted during the term of the variance by the “X-Factor Multiplier” according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees at the time the petition is filed.

$$Fee = (Quantity\ of\ Pollutant\ in\ tons) * ("X-Factor\ Multiplier") * ("X-Factor")$$

Where:

“X-Factor” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed); and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

2. **Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term within 30 days of its termination. The fee for each pollutant shall again be calculated pursuant to subsection (1)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on actual emissions shall be determined by the petitioner. Within forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded by the District.

Table 2 – Excess Emissions

Air Contaminant		X-Factor Multiplier Per Ton of Contaminant
CO	Carbon Monoxide	0.5
NOx	Oxides of nitrogen (expressed as NO2)	1
PM	Particulate Matter	2
ROG	Reactive Organic Gases, except methane and those containing sulfur	1
SOx	Oxides of sulfur (expressed as SO2)	1
TRS	Total Reduced Sulfur compounds (expressed as hydrogen sulfide)	2

- 3. Opacity Emissions:** The petitioner shall evaluate the effect of the proposed variance on the opacity of exhaust gases which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall calculate emissions and shall report information pursuant to this Section.
- a. Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum opacity of exhaust gases which would be authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.
  - b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum opacity of exhaust gases which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.
  - c. Excess Opacity (Emissions):** The report shall include an estimate of the intensity and of the number of opacity events in excess of regulatory limits which may occur.
  - d. Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for opacity shall be determined by multiplying the intensity of the opacity event by the number of days the event occurred. The resulting value shall be the “X-Factor Multiplier” which shall be applied to the value of “X” established for the fiscal year in which the variance was granted according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees at the time the petition is filed.

$$\text{Estimated Fee} = (\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (\text{“X - Factor”}) * (\text{Days})$$

Where:

- “PTE Opacity” is the highest opacity anticipated to occur;
- “Allowed Opacity” is the lowest applicable regulatory limit for opacity;
- “X-Factors” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed).; and
- “Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

- e. **Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term within 30 days of its termination. The fee for opacity shall again be calculated pursuant to subsection (3)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on actual emissions shall be determined by the petitioner. Within forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded by the District.

$$\text{Estimated Fee} = (\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (\text{"X - Factor"}) * (\text{Days})$$

Where:

“PTE Opacity” is the highest opacity anticipated to occur

“Allowed Opacity” is the lowest applicable regulatory limit for opacity

“X” is equal to the X-Factor in effect at the time of the emission; and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance

## Regulation IV

### Rule 404 – Hearing Board Fees

*This Rule was first adopted December 16, 2004; revised May 19, 2005.*

*The current version was adopted by the Governing Board via Resolution ~~2014-7~~ ~~2018-X~~ on ~~October 16, 2014~~ ~~May 10,~~ 2018.*

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- C. EXCESS EMISSION FEE SCHEDULE

## RULE 404 HEARING BOARD FEES

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- 1. Additional Fees:** Additional Hearing Board fees and costs may be assessed by the Hearing Board as a direct result of the action which the applicant or petitioner has brought before the Hearing Board.
  - 2. Costs of Hearing Transcripts and Recordings:** Any person requesting a written transcript or recording of the hearing shall pay the cost of such transcript or recording. The parties to Hearing Board proceedings may be directed by the Hearing Board to pay the cost of transcripts necessary for the Hearing Board's determination of the matter, in such proportion as the Hearing Board may order.
  - 3. Fee Waivers and Refunds for Specified Appeals**
    - a. Third party appeals or re-hearings that lead to the overturning of a previous decision by the Hearing Board or by the APCO shall be refunded 75% of the filing fee.
    - b. When issuing a permit pursuant to H&SC §42311.2, the Hearing Board may waive all or part of these fees if it determines that circumstances warrant that waiver.
    - c. Any person may allege that payment of the excess emission fee will cause an unreasonable hardship and may be excused from payment of such fees or a portion of such fees by order of the Hearing Board if the Board in its discretion determines after hearing evidence thereon that payment of such fees would cause financial hardship to the petitioner with no corresponding benefit to the public.
  - 4. Fee Payment:** Full payment of the hearing fees shall be received by the District prior to the commencement of the hearing.

Table 1 – Hearing Board Fees

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Regular Hearing - Petitions to reverse APCO decisions – permit approvals & denials, levying of administrative civil penalties	5
Records of Proceedings	Actual Costs

C. **EXCESS EMISSION FEE SCHEDULE:** As part of the variance petition, the petitioner shall prepare and submit a report of the emissions which are proposed to be discharged during the term of the variance in accordance with this section. In addition to the filing fees assessed under this Rule, each petitioner for a variance shall pay to the ~~Clerk of the Hearing Board~~District, an emissions based fee for ~~the total weight of all~~ emissions ~~in excess of that allowed under District Rule or permit~~ which are discharged during the term of the variance ~~that are in excess of the quantity authorized pursuant to District permit, District Rule, or State law.~~ The APCO shall retain at all times the sole authority to determine the quantity of emissions released and any associated fees.

~~1. Estimated:~~ As part of the variance petition, the applicant shall provide an estimate of emissions to be discharged and shall pay an excess emission fee calculated based on Table 1 below. **Estimated Emissions:** The petitioner shall evaluate the effect of the proposed variance of the quantity of pollutants which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall report the effect of the variance on emissions of the pollutant types and categories listed in Table 2- Excess Emissions. The petitioner shall calculate emissions and shall report information pursuant to this Section.

**a. Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum quantity of emissions which are authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.

**b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum quantity of emissions which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.

**c. Excess Emissions:** The report shall include an estimate of the quantity of emissions which may be emitted in excess of regulatory limits. The excess emissions shall be equal to the quantity resulting from the subtraction of the estimated allowable emissions from the potential to emit.

~~a-d.~~ **Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for each pollutant listed in Table 2 – Excess Emissions shall be determined separately by multiplying the quantity of excess emissions proposed to be emitted during the term of the variance by the “X-Factor Multiplier” according to the equation below. Payment for the estimated excess emission fees shall accompany the variance hearing filing fees. at the time the petition is filed.

$$Fee = (Quantity\ of\ Pollutant\ in\ tons) * ("X-Factor\ Multiplier") * ("X-Factor")$$

Where:

“X-Factor” is equal to the value established by the Board for the calendar year in which the variance was granted (order signed); and

“Days” is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance.

**2. Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term ~~of the variance, and within 30 days of its termination.~~ The fee for each pollutant shall ~~calculate the true excess emission based~~ again be calculated pursuant to subsection (1)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on ~~Table 1 below,~~ actual emissions shall be determined by the petitioner. Within ~~30~~forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded ~~the balance~~ by the District.

Table 42 – Excess Emissions

Air Contaminant		X-Factor Multiplier Per Ton of Contaminant
Organic gases, except methane and those containing sulfur	Carbon Monoxide	0.5
NO <sub>x</sub>	Oxides of nitrogen (expressed as NO <sub>2</sub> )	1
PM <sub>10</sub>	Particulate Matter	2
ROG	Total reduced sulfur compounds (expressed as hydrogen sulfide) Reactive Organic Gases, except methane and those containing sulfur	21
Particulate matter	Oxides of sulfur (expressed as SO <sub>2</sub> )	1
Opacity	Use Equation Total Reduced Sulfur compounds (expressed as hydrogen sulfide)	2

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**3. Opacity Emissions:** For each source which emits gases, the petitioner shall evaluate the effect of the proposed variance on the opacity of exhaust gases which may be emitted by the subject equipment or source during the term of the variance. The petitioner shall calculate emissions and shall report information pursuant to this Section.

**a. Potential to Emit:** The report shall include an estimate of the potential to emit of the equipment or emission source while operating at maximum capacity under its operational and physical design. Any physical or operational limitations on the equipment or source to emit a pollutant(s) shall only be treated as part of its design if the limitation(s) is enforceable by the District. The potential to emit shall represent the maximum opacity of exhaust gases which would be authorized to be released during the term of the variance considering all requested relief, modifications, and exemptions requested in the variance petition.

**b. Allowable Emissions:** The report shall include an estimate of the quantity of emissions which are allowed to be released by the source pursuant to District permit, District Rule, or State law. The allowable amount shall represent the maximum opacity of exhaust gases which are authorized for release without considering any of the relief, modifications, or exemptions requested in the variance petition.

**c. Excess Opacity (Emissions):** The report shall include an estimate of the intensity and of the number of opacity events in excess of District Rules, permits, State or federal law may be assessed fees regulatory limits which may occur.

**a.d. Fee Calculation & Payment of Estimated Fees:** The Excess Emission fee for opacity shall be determined by multiplying the intensity of the opacity event by the number of days the event occurred. The resulting value shall be the "X-Factor Multiplier" which shall be applied to the value of "X" established for the fiscal year in which the variance was granted according to the following equation below. Payment for

the estimated excess emission fees shall accompany the variance hearing filing fees at the time the petition is filed.

$$\text{Estimated Fee} = \frac{(\text{Actual Opacity \%} - \text{Allowed Opacity \%})(\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (0.04 X) * (\text{Operating Days}) * 100}{("X - Factor") * (\text{Days})}$$

Where:

"PTE Opacity" is the highest opacity anticipated to occur;

"Allowed Opacity" is the lowest applicable regulatory limit for opacity;

"X-Factors" is equal to the X-Factor value established by the Board for the calendar year in effect at the time of the emission; which the variance was granted (order signed); and

Operating "Days" is equal to the number of calendar days during which the excess emissions occurred, one or more opacity violations may occur during the period of the variance.

**e. Actual Emissions, Fee Recalculation & Adjustments:** The petitioner shall prepare and submit an estimate of the actual emissions discharged during the variance term within 30 days of its termination. The fee for opacity shall again be calculated pursuant to subsection (3)(a) – (d) above, and the difference between the amount initially paid (estimated fee) and the fee based on actual emissions shall be determined by the petitioner. Within forty five (45) days of the termination of the variance, the petitioner shall pay the difference, or the balance shall be refunded by the District.

$$\text{Estimated Fee} = (\text{PTE Opacity \%} - \text{Allowed Opacity \%}) * (\text{"X - Factor"}) * (\text{Days})$$

Where:

"PTE Opacity" is the highest opacity anticipated to occur

"Allowed Opacity" is the lowest applicable regulatory limit for opacity

"X" is equal to the X-Factor in effect at the time of the emission; and

"Days" is equal to the number of calendar days during which one or more opacity violations may occur during the period of the variance